

Title	Juvenile Law: Miscellaneous Rules (amend Cal. Rules of Court, rules 39, 1438, 1449, and 1450)
Summary	The proposed rule amendments would promote compliance with statutory mandates and facilitate judicial consistency.
Source	Family and Juvenile Law Advisory Committee Hon. Mary Ann Grilli and Hon. Susan Huguenor, Co-chairs
Staff	Theresa Owens, 415-856-8790, theresa.owens@jud.ca.gov Christopher Wu, 415-865-7721, christopher.wu@jud.ca.gov
Discussion	<p>The Family and Juvenile Law Advisory Committee recommends the following rule amendments to California Rules of Court rules 39, 1438, 1449, and 1450.</p> <p><i>Rule 39–Juvenile appeals</i> The committee proposal to amend rule 39 is intended to promote consistency and efficiency between juvenile courts when there has been an intercounty transfer and a subsequent appeal. Staff has learned from court executives that an informal arrangement exists between courts whereby the court that made the order being appealed pays for the cost of transcript preparation for indigent parents and children. However, recently there have been disagreements as to which court is responsible for the costs associated with appellate record preparation. The Family and Juvenile Law Advisory Committee believes the amendment is necessary to promote uniformity.</p> <p><i>Rule 1438–Attorneys for parties</i> The committee proposes amending rule 1438 to reflect the new statutory requirement that attorneys for dependent children provide their contact information to the child’s caregiver, and to the child in specified circumstances, in a timely manner.</p> <p>In 2003, the California Legislature enacted Senate Bill 591, which, in part, added section 16010.6 to the Welfare and Institutions Code. Welfare and Institutions Code section 16010.6(b) requires the Judicial Council to adopt a rule of court directing the attorney of a dependent child to timely provide his or her contact information to the child’s caregiver, upon receipt of the caregiver’s name, address, and telephone number, and to the child if the child is at least 10 years old.</p> <p>Although children involved in dependency proceedings are commonly</p>

referred to as dependents, they are not legally dependents until after the juvenile court has made dispositional findings. This proposal tracks the statutory language by incorporating the term “dependent child” into the rule rendering it only applicable postdisposition, after a judicial decision has been made as to the allegations, possibly weeks or months after the petition was filed.

It was the sponsor’s intent that Senate Bill 591 apply to every child involved in a dependency proceeding and in furtherance of that objective, staff recommends that the Judicial Council seek to have legislation introduced to remedy this defect, so that the rule will be applicable to every child for whom a dependency petition has been filed. In the interim, the rule will mirror the language of Welfare and Institutions Code section 16010.6(b).

Welfare and Institutions Code section 16010.6(b) requires the attorney to provide his or her contact information in a “timely” manner. In order to provide maximum guidance to juvenile attorneys, the Family and Juvenile Law Advisory Committee recommends that the rule define “timely” as not more than 10 days. The committee believes that 10 days (1) is the maximum period of time that should elapse before the caregiver and/or child receives the attorney’s contact information, (2) is a reasonable period of time in which to require contact between the attorney and the caregiver and child, and (3) is consistent with the statutory intent, including the statutory requirement that the Council adopt a rule that implements the statute.

Rule 1449–*Commencement of jurisdiction hearing*;

Rule 1450–*Contested hearing on petition*

The committee proposes to amend rules 1449 and 1450 to reflect the new statutory requirements that if a court finds that a child is not an abused or neglected minor, as set forth under section 300 of the Welfare and Institutions Code, said child must be returned to the physical custody of his or her parent or guardian within two working days of the court’s decision.

Assembly Bill 524, signed into law in 2003, enacted Welfare and Institutions Code section 361.1, which requires that if a child is removed from a parent or guardian, and the juvenile court subsequently finds that the child does not come within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, the child must be returned to the parent or guardian “immediately ..., but, in any case, not more than two working days following the date of

that finding, unless the parent or guardian and the agency with custody of the child agree to a later date for the child’s release.” The statute requires the Judicial Council to adopt a rule of court “to ensure proper notice to a parent or guardian” of this requirement.

The text of the proposed amended rules is attached at pages 4–6.

The relevant portions of Senate Bill 591 are attached at page 7.

The relevant portions of Assembly Bill 524 are attached at page 8.

Attachments

Rules 39, 1438, 1449 and 1450 of the California Rules of Court would be amended, effective January 1, 2005, to read:

Rule 39. Juvenile Appeals

~~(a)-(d)~~ ***

(e) [Preparation of the record] Under rule 810 the court must pay for the preparation of the verbatim transcript for indigent parents and children. If the matter is transferred under rule 1425, the court that made the order being appealed must pay all allowable costs for preparation of the verbatim transcript.

~~(e)(f)~~ ***

~~(f)(g)~~ ***

~~(g)(h)~~ ***

Rule 1438. Attorneys for parties (§§ 317, 317.6)

~~(a)-(b)~~ ***

(c) [Competent counsel] Every party in a dependency proceeding who is represented by an attorney is entitled to competent counsel.

~~(1)-(4)~~ ***

(5) (*Attorney contact information*) The attorney for a dependent child must provide his or her contact information to the child's caregiver no later than 10 days after receipt of the name, address, and telephone number of the child's caregiver. If the child is 10 years of age or older, the attorney must also provide his or her contact information to the dependent child no later than 10 days after receipt of the caregiver's contact information. The attorney may give contact information to a dependent child who is under 10 years of age.

~~(5)(6)~~ **(6) (*Caseloads for children's attorneys*)** The attorney for a child must have a caseload that allows the attorney to perform the duties required by Welfare and Institutions Code section 317(e) and this rule and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements set forth in (3) ~~and (4)~~ (5).

1
2 (d)-(f) ***
3

4 **Rule 1449. Commencement of jurisdiction hearing—advice of trial rights;**
5 **admission; no contest; submission**
6

7 (a) **[Petition read and explained (§ 353)]** At the beginning of the jurisdiction
8 hearing, the petition ~~shall~~ must be read to those present. On request of the child
9 or the parent, guardian, or adult relative, the court ~~shall~~ must explain the
10 meaning and contents of the petition and the nature of the hearing, its
11 procedures, and possible consequences.
12

13 (b) **[Rights explained (§§ 341, 353, 361.1)]** After giving the advice required by
14 rule 1412, the court ~~shall~~ must advise the parent or guardian of the following
15 rights:
16

17 (1) The right to a hearing by the court on the issues raised by the petition;
18

19 (2) The right to assert the privilege against self-incrimination;
20

21 (3) The right to confront and to cross-examine all witnesses called to testify
22 against the parent or guardian;
23

24 (4) The right to use the process of the court to compel attendance of
25 witnesses on behalf of the parent or guardian; and
26

27 (5) The right, if the child has been removed, to have the child returned to the
28 parent or guardian within two working days after a finding by the court
29 that the child does not come within the jurisdiction of the juvenile court
30 under Welfare and Institutions Code section 300, unless the parent or
31 guardian and the child welfare agency agree that the child will be released
32 on a later date.
33

34 (c)-(g) ***
35
36

37 **Rule 1450. Contested hearing on petition**
38

39 (a)-(g) ***
40

41 (h) **[Findings of court—allegations not proved (§§ 356, 361.1)]** If the court
42 determines that the allegations of the petition have not been proved by a
43 preponderance of the evidence, the court ~~shall~~ must dismiss the petition and

1 terminate any detention orders relating to the petition. The court must order
2 that the child be returned to the physical custody of the parent or guardian
3 immediately, but in any event, not more than two working days following the
4 date of that finding, unless the parent or guardian and the agency with custody
5 of the child agree to a later date for the child's release. The court must make
6 the following findings, noted in the order of the court:
7

- 8 (1) Notice has been given as required by law;
9
10 (2) The birthdate and county of residence of the child;
11
12 (3) The allegations of the petition are not proved.
13
14
15
16
17
18
19
20
21

Senate Bill No. 591

CHAPTER 812

An act to amend Sections 358, 358.1, 361.3, 16002, and 16501.1 of, and to add Sections 16010.4, 16010.5, 16010.6, and 16503.5 to, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor October 10, 2003. Filed
with Secretary of State October 11, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 591, Scott. Dependent children: caregiver information.

This bill would also provide that as soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver.

The people of the State of California do enact as follows:

SEC. 7. Section 16010.6 is added to the Welfare and Institutions Code, to read:

16010.6. (a) As soon as possible after a placing agency makes a decision with respect to a placement or a change in placement of a dependent child, the placing agency shall notify the child's attorney and provide to the child's attorney information regarding the child's address, telephone number, and caregiver. This requirement is declaratory of existing law.

(b) The Judicial Council shall adopt a rule of court directing the attorney of a dependent child of the juvenile court, upon receipt from the agency responsible for placing the child of the name, address, and telephone number of the child's caregiver, to timely provide the attorney's contact information to the caregiver and, if the child is 10 years of age or older, to the child. This rule shall not preclude an attorney from giving contact information to a child who is younger than 10 years of age.

Assembly Bill No. 524

CHAPTER 306

An act to add Section 361.1 to the Welfare and Institutions Code, relating to minors.

[Approved by Governor September 4, 2003. Filed with Secretary of State September 5, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 524, Haynes. Dependent children.

Existing law authorizes the removal of a child from the custody of a parent or guardian under specified conditions, including the neglect or abuse of that child or the finding by the juvenile court that the minor is a dependent child of the court.

This bill would require that if a child is removed from the physical custody of a parent or guardian on specified grounds, the child shall be returned to the physical custody of the parent or guardian immediately after a finding by the juvenile court that the child is not a person who may be adjudged to be a dependent child of the juvenile court, but, in any case, not more than 2 working days after the date of that finding, except as specified.

The bill would also require the Judicial Counsel to adopt a rule of court to ensure proper notice to a parent or guardian regarding these provisions, as specified.

The people of the State of California do enact as follows:

SECTION 1. Section 361.1 is added to the Welfare and Institutions Code, to read:

361.1. (a) If a child is removed from the physical custody of a parent or guardian on the ground that the child may come within the jurisdiction of the juvenile court pursuant to Section 300, the child shall be returned to the physical custody of that parent or guardian immediately after a finding by the juvenile court that the child is not a person described in Section 300, but, in any case, not more than two working days following the date of that finding, unless the parent or guardian and the agency with custody of the child agree to a later date for the child's release. Nothing in this section shall affect a parent or guardian's remedies when a child is not returned immediately, as those remedies existed prior to enactment of this section.

(b) The Judicial Council shall adopt a rule of court to ensure proper notice to a parent or guardian regarding the circumstances and the timeframe in which a child is required to be released from custody pursuant to this section.